

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 No. 08 CR 6
v.)
)
 Judge Wayne R. Andersen
GERARDO RODRIGUEZ)

NOTICE OF FILING

To: Clifford C. Histed
Assistant United States Attorney
219 S. Dearborn St., 5th Floor
Chicago, Illinois 60604

Please take notice that on this 28th day of March, 2008, the undersigned filed the following document(s) in the above captioned cause, a copy of which is attached hereto:

— **DEFENDANT RODRIGUEZ' RESPONSE TO THE GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE JURY NULLIFICATION**

Respectfully submitted,

FEDERAL DEFENDER PROGRAM
Terence F. MacCarthy
Executive Director

By: s/Daniel J. Hesler
Daniel J. Hesler

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**DEFENDANT RODRIGUEZ' RESPONSE TO THE GOVERNMENT'S
MOTION IN LIMINE TO PRECLUDE JURY NULLIFICATION**

Defendant GERARDO RODRIGUEZ, by the Federal Defender Program and its attorney, DANIEL HESLER, hereby responds to the government's motion in limine to preclude jury nullification. In general, the defense agrees with the government's general assertion that jury nullification is not a valid defense, and defense counsel is not intending to promote such a defense. However, the government's motion sweeps very broadly, and evidence should not be excluded merely because it happens to paint the defendant in a sympathetic light.

Defendant further states as follows:

Discussion

To state the obvious, this is an illegal reentry trial. The government will be required to prove that Mr. Rodriguez is a non-citizen, that he has been previously removed from the United States, that he re-entered and/or was found here, and that

he had not received permission from the Department of Homeland Security to do so. Three of the four elements are heavily dependent on the introduction of records. The question of whether the defendant is, in fact, “here,” is the only element that is in any way a function of traditional eyewitness testimony.

Defense counsel recognizes the basic principles of jury nullification law, and will abide by them. If any difficulties arise, it will be if the defendant chooses to take the stand. For the purposes of the defendant’s own testimony, much of what the government seeks to exclude is so inextricably intertwined with the clearly relevant question of whether or not the defendant is here. “Acts satisfy the inextricably intertwined doctrine if they complete the story of the crime on trial; their absence would create a chronological or conceptual void in the story of the crime; or they are so blended or connected that they incidentally involve, explain the circumstances surrounding, or tend to prove any element of, the charged crime.” *United States v. Senffner*, 280 F.3d 755, 764 (7th Cir. 2002).

Assuming, hypothetically, that the defendant on the stand were to admit that he is in fact here,¹ the obvious next questions might be “how did you get here?” or “why did you come back?” The answers to those questions are so inextricable

¹If the defendant does not admit that he is here on direct, defense counsel assumes that the government will vigorously cross-examine him in an effort to get him to admit it on cross.

intertwined with the question as to his present location as to leave a gaping chronological and conceptual hole in the narrative of the trial if left unaddressed. As discussed in *Senffner*, how and why Mr. Rodriguez allegedly returned to U.S. explains the circumstances surrounding an element of the charged offense. The mere fact that the explanation may involve his family is not a reason to preclude Mr. Rodriguez from explaining why he is or isn't here.

Respectfully submitted,
FEDERAL DEFENDER PROGRAM
Terence F. MacCarthy
Executive Director

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CERTIFICATE OF SERVICE

The undersigned, Daniel J. Hesler, an attorney with the Federal Defender Program hereby certifies that in accordance with FED.R.CRIM. P. 49, FED. R. CIV. P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

DEFENDANT RODRIGUEZ' RESPONSE TO THE GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE JURY NULLIFICATION

was served pursuant to the district court's ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on March 28, 2008, to counsel/parties that are non-ECF filers:

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